LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
MAY 22 1954
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

NO. 57

ASSOCIATION OF WESTINGHOUSE SALARIED EMPLOYEES, Petitioner

v.

WESTINGHOUSE ELECTRIC CORPORATION

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

LOYAL H. GREGG
MAHLON E. LEWIS
900 Farmers Bank Building
Pittsburgh 22, Pa.
Attorneys for Respondent

Of Counsel:
JOHN W. WISHART
ROBERT D. BLASIER
Gateway Center
Pittsburgh 22. Pa.

INDEX.

	PAGE
Question Presented	1
Statement	2
Argument	5
Conclusion	16

TABLE OF CASES.

American Federation of Labor v. Western Union Telegraph Company, 179 F2 535 (CA 6, 1950) . 12

J. I. Case Co. v. NLRB 321 U.S. 332, 88 L Ed 673 (1944) 9

Mercury Oil Refining Co. v. Oilworkers International Union 178 F2 980 (CA 10, 1951) 14

Milk & Ice Cream Drivers & Dairy Employees Union v. Gillespie Milk Products Corp., 203 F2 650 (CA 6, 1953) 13

Skelly Oil Company v. Phillips Petroleum Company 339 U.S. 667, 94 L Ed 1194 (1950) 8

Textile Workers Union v. Aresta Milk Company 193 F2 529 (CA 4, 1951) 14

The Fair v. Kohler Die & Specialty Company, 228 U.S. 22, 57 L Ed 716 (1913) 9

Trailsmobile Company etc. v. Lawrence Whirls, 331 U.S. 40, 91 L Ed 1328 (1946) 9

United Protective Workers of America v. Ford Motor Company 194 F2 997 (CA 7, 1952) 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

NO. 725

ASSOCIATION OF WESTINGHOUSE SALARIED EMPLOYEES, Petitioner

v.

WESTINGHOUSE ELECTRIC CORPORATION

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

QUESTION PRESENTED

Does Section 301(a) and (b) of the Taft-Hartley Act authorize a labor union to sue an employer in a United States District Court to recover wages contracted for by the employer and the employees individually, and allegedly owed to the employees represented by the union?

STATEMENT

On November 19, 1951, the petitioner filed a Complaint in its own behalf in the United States District Court for the Western District of Pennsylvania alleging therein:

1. That the plaintiff union, Association of Westinghouse Salaried Employees, was the collective bargaining representative for certain salaried employees of the defendant, Westinghouse Electric Corporation;

2. That on November 1, 1950, the union and the company entered into a Collective Bargaining Agreement covering the terms and conditions of employment for said employees, a copy of said Agreement being attached to the Complaint;

3. That approximately 4,000 employees whom the union represented did not work on April 3, 1951, and were not paid for that day;

4. That the company's failure to pay for the time not worked constituted a breach of the Collective Bargaining Agreement; and

5. Therefore, the union was entitled to a judgment in *its* favor for the amount of the unpaid salaries.

On December 7, 1951, the respondent filed a Motion to Dismiss the Complaint on the grounds that (a) the Court lacked jurisdiction over the subject matter; (b) the plaintiff was not the real party in interest; and (c) the Complaint failed to state a claim upon which relief could be granted.

On May 26, 1952, the petitioner filed a "First Amended Complaint"; whereupon the respondent filed a

second Motion to Dismiss asserting the same grounds as set forth in its original Motion.

The Amended Complaint changed the form of the action to one brought by the union *"individually"* and *"in behalf of the individuals in interest whom it represents"* rather than one brought in its own behalf.

In addition to asserting that the respondent's refusal to pay the 4,000 employees who did not report for work on April 3, 1951, was a breach of the Collective Bargaining Agreement, the Amended Complaint asserted that respondent's refusal to pay violated certain written instruments which allegedly were a part of the Collective Bargaining Agreement.

The Amended Complaint asked for Declaratory Judgment in favor of the petitioner declaring the rights of the parties under the Collective Bargaining Agreement, and judgment in the amount of the unpaid salaries in favor of the individual employees *who were not named as parties to the action.*

District Judge Rabe F. Marsh held that the Court had jurisdiction over the subject matter and that the petitioner was a proper party plaintiff, but dismissed the Amended Complaint because it failed to state a claim upon which relief could be granted. More specifically, Judge Marsh held that the Collective Bargaining Agreement did not provide that the respondent should pay employees for time not worked; that the numerous instruments attached to the Complaint as Exhibits were not part of the Collective Bargaining Agreement; and that there was nothing in the various instruments which

would require the respondent to pay for the time not worked.

The Court dismissed the Complaint without prejudice to the petitioner to amend by setting forth a cause of action averring that the employees were absent from work because of some reason specifically covered by the contract.

The petitioner, without availing itself of the opportunity to amend in accordance with the Court's Order and without asking for a Final Order to be entered from which an appeal would lie, appealed from the District Court's Order to the Court of Appeals for the Third Circuit. The case was first heard by Circuit Judges Kalodner, Staley and Hastie. It was reargued before the Court *en banc* on December 22, 1953. On January 28, 1954, the Court in a four to three decision entered an Order vacating the judgment of the District Court, and it dismissed the Complaint for lack of jurisdiction. Chief Judge Biggs and Circuit Judges Kalodner and Hastie agreed with the District Judge that, as a matter of law, the petitioner's Complaint should be dismissed because it failed to state a claim upon which relief could be granted. The majority of the Court, speaking through Circuit Judge Staley, indicated their agreement with the District Court that the Complaint failed to state a claim, but thought that the Complaint should be dismissed on the grounds of lack of jurisdiction over the subject matter. (R. 114 and P. 6 of Petition).

The union has petitioned this Court to review the Court of Appeals' decision on the question of jurisdiction. (P. 6 of Petition).

ARGUMENT IN OPPOSITION TO THE PETITION

I.

The Petition Requests an Advisory Opinion.

The petitioner has requested this Court to make an adjudication of the scope of the jurisdiction granted by Section 301 (a) and (b) of the Taft-Hartley Act without having a real "case" or "controversy" to be decided. In effect the petitioner has requested an advisory opinion.

The first Complaint filed by the petitioner in the District Court sought to recover wages for 4,000 employees for time admittedly not worked by the employees. The theory of petitioner's claim was that respondent was required to pay its employees their full month's salary whether they worked or not.

In an effort to meet the respondent's objection that the Complaint failed to state a claim because there was nothing in the Collective Bargaining Agreement which required the respondent to pay employees who refused to work, the petitioner filed an Amended Complaint. In its Amended Complaint the petitioner attempted to incorporate into the Collective Bargaining Agreement the corporation's *Manuals of Accounting & Industrial Relations Policies & Accounting Procedures.* The material which the petitioner sought to incorporate into the Collective Bargaining Agreement consisted of at least six voluminous books containing thousands of very finely printed pages. The petitioner has admitted that there was nothing in the Collective Bargaining Agreement which obligated the respondent corporation to pay those of its employees who voluntarily remained away from work. However, in an effort to bring itself within Sec-

tion 301 (a) and (b) of the Taft-Hartley Act, the petitioner has asserted that there was an obligation to pay for voluntary absences in the corporation's "Operations Manuals" and that those manuals were a part of the contract. Obviously, the petitioner's assertion was without merit.

The parties to the Collective Bargaining Agreement specifically covered all of the types of absences which were to be paid absences; voluntary absences were not included. This fact was admitted by the petitioner. In addition, the parties to the contract specifically provided that the Collective Bargaining Agreement constituted the entire understanding of the parties. (Section XVII of the Contract, R. 44).

The National Labor Relations Board and the eight Federal Judges who have reviewed the case have all agreed that petitioner's claim was without merit.

Prior to the institution of this suit, the petitioner filed an unfair labor practice charge with the National Labor Relations Board, contending before the Board that the respondent's failure to pay the employees for the voluntary absences (the one day's pay for April 3, 1951, for which the union is now suing in this Court) constituted an unfair labor practice. The Regional Director of the National Labor Relations Board found, after a complete and thorough investigation, that the petitioner's claim was completely without merit, and accordingly, refused to issue a complaint against the respondent. The refusal to issue a complaint was appealed by the petitioner to the General Counsel of the National Labor Relations Board in Washington, D. C. This appeal was, after further review and investigation, denied by the General

Counsel, and the decision of the Regional Director in refusing to issue a complaint was affirmed.

These same matters were presented to the District Court in the Complaint filed under Section 301 (a) and (b) of the Taft-Hartley Act. The District Judge dismissed the Complaint as a matter of law because:

1. The Collective Bargaining Agreement did not "contain any covenant on the part of the corporation to pay its employees for voluntary absences." (R. 101);

2. The manuals could not be construed as constituting a covenant that the respondent should pay its employees full salaries for voluntary absences (R. 102 & 103);

3. The manuals "were instructions by the corporation to its accountants for determining the number of hours per week an employee worked and nothing more" (R. 103); and

4. Such manuals were not "adopted and incorporated as a necessary and integral part of said contract" (R. 103).

The District Judge stated in his opinion that:

> "It seems to us that the contract becomes ambiguous solely by reason of the arguments and assertions of the plaintiff on matters dehors the contract. In our opinion the terms of the contract between the corporation and the union are pellucid concerning what type of absence shall be paid absences and what type shall not be paid." (R. 103 & 104).

Before the Court of Appeals, sitting *en banc,* the respondent corporation asserted that the petitioner's claim was not only without merit but also that the Court lacked jurisdiction over the subject matter of the suit. Circuit Judge Hastie, speaking for three members of the Court, agreed with the District Judge that the petitioner's claim was without merit. He stated at Page 129 of the Record: "Coming finally to the merits, I agree with the District Court that the facts alleged do not entitle the plaintiff or the employees it represents to relief." (R. 129).

The majority of the Court, speaking through Circuit Judge Staley, agreed with the District Judge's dismissal of the suit but thought that the dismissal should be put upon the ground of lack of federal jurisdiction over the subject matter. (R. 114). Even the petitioner, at Page 6 of his Petition to this Court asking for review, states that the majority of the Circuit Judges "did indicate their agreement with the trial court as to the inadequacy of the facts stated in the Complaint to support the cause of action."

Although the petitioner's Complaint is obviously defective on its face, the petitioner now requests this Court to review the narrow issue of jurisdiction decided by the Court of Appeals.

It is well settled that jurisdiction in the first instance of a "case arising" under a federal law is determined by the allegations in the plaintiff's Complaint. *Skelly Oil Co. v. Phillips Petroleum Co.,* 339 U. S. 667, 94 L. ed. 1194 (1950). With deference to the rule that "jurisdiction is the authority to decide the case either way", the respondent respectfully submits that to establish jurisdiction the plaintiff's complaint must be

a *substantial claim* under an Act of Congress, and can not be a claim which is frivolous and obviously without merit. *The Fair v. Kohler Die & Specialty Co.*, 228 U. S. 22, 57 L. ed. 716 (1913).

In the case at bar it was necessary for the petitioner to show that the claim arose out of the Collective Bargaining Agreement in order to establish the jurisdiction of the Court. The Labor Board, the District Court and the Court of Appeals were all of the opinion that the petitioner's claim was without merit. In addition, the majority of the Court of Appeals held that the petitioner's claim for wages for the employees, even if sound, arose out of the individual employment contracts rather than the Collective Bargaining Agreement, and therefore, was not within the jurisdiction granted by Section 301 (a) or (b) of the Taft-Hartley Act. See *J. I. Case Co. v. N.L.R.B.*, 321 U. S. 332, 88 L. ed. 673 (1944).

The petitioner now seeks to have this Honorable Court review the narrow jurisdictional issue decided by the Court of Appeals, notwithstanding the fact that the petitioner's claim is wholly without merit and even frivolous.

Respondent respectfully submits that the petitioner is in effect seeking an advisory opinion from this Court on the question of the jurisdiction granted by Congress to the United States District Courts under Section 301 (a) and (b) of the Taft-Hartley Act. Such practice has always been condemned by this Court. *Trailsmobile Company & International Union, United Automobile, Aircraft & Agricultural Workers of America, U. A. W., C. I. O., Local No. 392, Petitioners v. Lawrence Whirls*, 331 U. S. 40, 91 L. ed. 1328 (1946).

II.

The Decision of the Court of Appeals in the Case at Bar Is Not Conflict With Decisions of Other Circuits.

The petitioner asserts, as reason for the granting of the Writ, that the decision of the Court of Appeals is in direct conflict with decisions of the Courts of Appeals for the Fourth and Sixth Circuits and is probably in conflict with the views of the Seventh and Tenth Circuits.

A close analysis of the cases relied upon by petitioner will disclose that the decision of the Court of Appeals in the case at bar is not in *direct* conflict with the cited cases and is not in conflict in *principle*.

The petitioner in the case at bar is suing to recover unpaid salaries allegedly owed to 4,000 employees whom the petitioner represents. The 4,000 employees were not parties to the suit; there was nothing in the Collective Bargaining Agreement which provided that the union was authorized to sue for the employees' wages; and there was no allegation in the Complaint that the 4,000 employees had assigned their rights to the wages in question to the petitioner.

The majority of the Court of Appeals followed this Court's decision in *J. I. Case Co. v. N.L.R.B.*, 321 U. S. 332, 335, 88 L ed 763 (1944) and distinguished between the Collective Bargaining Agreement and the individual employment contract. The Court stated that:

> "It is perfectly obvious that the collective contract between the union and the employer is not a contract of hire. No one has a job by reason of it

and no obligation to any individual ordinarily comes into existence from it alone." (R. 117 & 118).

The Court pointed out that the right to wages was the individual several right of the employee which arose out of the contract of hire and that:

> "* * * if there was a violation of contract here, it was a violation of the individual employment contract and, thus, there is no federal jurisdiction since Section 301 (a) cannot be invoked." (R. 119).

The Court further pointed out the serious questions which would necessarily be raised by a contrary decision. It stated that:

> "Plaintiff admits that the rights asserted are the individual rights of some four thousand employees. None of them are joined or even named. Indeed, part of the relief sought is the names of those entitled to payment. *In such circumstances, how should the doctrine of res judicata be applied?* If plaintiff should prevail on the merits, *what of an employee in the unit who may have been inadvertently omitted from the reckoning?* Is he barred? *Is defendant safe in paying the judgment in favor of plaintiff? If plaintiff should lose on the merits, as it did in the district court, are all employees in the unit barred?* (R. 122). (Italics supplied)

Petitioner has asserted that the decision of the Court of Appeals in the case at bar is in direct conflict with decisions of the Courts of Appeals for the Sixth Circuit, the Fourth Circuit and probably in conflict with the Seventh and Tenth Circuits.

Argument in Opposition to the Petition.

Respondent respectfully submits that all of the cases cited by the petitioner involve different factual situations as well as principles of law entirely different from those in the case at bar.

Petitioner relies most heavily upon the case of *American Federation of Labor v. Western Union Telegraph Co.*, 179 F. 2d. 535 (C.A., 6, 1950). In that case the union sued for a permanent injunction against the employer from violating a pension agreement which was allegedly part of the Collective Bargaining Agreement. The jurisdictional question presented by the respondent in the case before this Court and decided by the Court of Appeals was never presented to the Court in the *Western Union Case* and it was not decided by that Court, even in principle. In the *Western Union Case* the defendant moved to dismiss for lack of jurisdiction on the ground that the suit was based upon a pension plan and not upon the Collective Bargaining Agreement. This was the sole jurisdictional question presented to and decided by the Court. In addition, the facts in the *Western Union Case* are completely different from the facts in the case before this Court. In that case the Collective Bargaining Agreement specifically referred to the pension plan and provided that during the life of the Collective Bargaining Agreement the company would not abandon or modify its existing pension plan. The pension plan became an essential part of the Collective Bargaining Agreement. The Collective Bargaining Agreement specifically provided that the *"union shall have the right to represent any of its members* before the Pension & Benefit Committee." Under these facts a change in the Pension Agreement which might affect individual employees became a change in the Collective Bargaining Agreement

which by the *contract itself could only* be disputed by the union.

A decision holding that the union could sue under Section 301 (a) and (b) of the Taft-Hartley Act under those facts is far different from a decision holding that a labor union cannot sue to collect the wages belonging to the individual employee under the facts in the case at bar.

The case of *Milk & Ice Cream Drivers & Dairy Employees Union v. Gillespie Milk Products Corp.*, 203 F. 2d 650 (C.A., 6, 1953) which was also cited by the petitioner as being in conflict with the Court's decision in the case at bar, does not touch the issues now before this Court. In that case the union sued the employer for a permanent injunction enjoining the employer from not abiding by an arbitration award allegedly made pursuant to the Collective Bargaining Agreement. The defendant moved to dismiss the complaint on the grounds that Section 301 (a) and (b) did not authorize a Federal District Court to grant injunctive relief and that the Norris-LaGuardia Act prevented the Court from enjoining an employer from violating a labor contract. A reading of the Court's opinion will disclose that the matters decided by the Court of Appeals in the case at bar were never presented to nor decided by the Court in the *Gillespie Case.*

Respondent submits that the *Gillespie Case* does not stand for the proposition urged by the petitioner and is completely irrelevant to the issues presented by the case at bar.

Likewise, the remaining cases cited by the petitioner are not in point on the issues decided by the Court of Appeals in the case before this Court.

The decision of the Court of Appeals for the Fourth Circuit in *Textile Workers Union v. Arista Mills Co.*, 193 F. 2d 529 (1951) is not in conflict with the case at bar. In that case the employees were on strike at the time the union and the employer negotiated a Collective Bargaining Agreement. One paragraph of the Agreement specifically covered the status and seniority rights of the striking workers. The union sued the employer under Section 301 (a) and (b) for violation of this particular clause of the Collective Bargaining Agreement. The jurisdictional question decided by the Court in the case at bar was never presented to nor decided by the Court in the *Arista Mills Case.*

The Tenth Circuit decision relied upon by the petitioner is *Mercury Oil Refining Co. v. Oilworkers International Union,* 187 F. 2d 980 (1951). That case involved a suit under Section 301 (a) and (b) for the enforcement of an arbitrator's award which was made pursuant to the Collective Bargaining Agreement. The question of jurisdiction decided by the Court in the case at bar was neither presented to nor decided by the Court in that case.

The decision of the Court of Appeals for the Seventh Circuit in the case of *United Protective Workers of America v. Ford Motor Co.*, 194 F. 2d 997 (1952) did not pass upon the jurisdictional question raised in the case at bar. The union sued for breach of seniority provisions in the Collective Bargaining Agreement. The individual rights belonging to the employee were not asserted by

the union but instead were asserted in a separate suit by the employee based upon diversity of citizenship and the statutory jurisdictional amount.

Respondent respectfully submits that the case at bar is the only decision by a Court of Appeals where a union has attempted by a suit under Section 301 (a) and (b) of the Taft-Hartley Act to recover the wages individually contracted for by the employer and his employees and allegedly owed to the employees. The Court of Appeals correctly followed the principles of this Court as set forth in *J. I. Case Co. v. N.L.R.B., supra,* and held that the right to wages was an individual several right belonging to the employee by virtue of his employment contract and was not a collective right belonging to the union by reason of the Collective Bargaining Contract. In all of the cases cited by the petitioner where the suit appeared to involve the individual rights of the employees being enforced by the union, the rights were collective rights belonging to the union by reason of specific provisions in the Collective Bargaining Agreement. This principle is well illustrated by the *Western Union Case, supra,* upon which the petitioner relies most heavily. The matters in dispute were pension rights of individual employees which the petitioner in this case urges are not unlike the individual employee's right to wages. However, in that case the individual pension rights were specifically covered by the Collective Bargaining Agreement *and the Collective Bargaining Agreement specifically provided that the union would represent the employees in the enforcement of those rights.*

This is an entirely different situation from the one in the case at bar. Here the union is attempting to re-

cover wages allegedly owed to the individual employees without any authorization from the employees to sue on their behalf.

CONCLUSION

The petition in this case is without merit. The asserted discrepancy of decisions is purely fictitious. There is only a difference of result based upon different facts. The legal principle, decided by the Court, is in harmony with all of the cases relied upon by the petitioner.

The Court of Appeals for the Third Circuit correctly held that Section 301 (a) and (b) of the Taft-Hartley Act did not open the doors of the United States District Courts to hear and decide every individual claim or grievance which an employee might have against his employer.

In enacting Section 301 of the Taft-Hartley Act, Congress did not intend to make a labor union a guardian, or a trustee *ad prosequendum*, for all of the employees of every company for the enforcement of every individual right the employee might have against his employer.

The petitioner seeks review of this jurisdictional issue when its claim upon the merits is obviously defective. A reversal of the decision of the Court of Appeals would not result in a decision in favor of the petitioner.

The issue attempted to be presented to the Court is not clear. The petitioner does not have a case within the jurisdictional grant in Section 301 (a) or (b) of the Taft-Hartley Act. The allegations in the Complaint are

simply being used by the petitioner in an effort to have this Court render an advisory opinion interpreting Section 301 (a) and Section 301 (b) of the Taft-Hartley Act.

Wherefore respondent requests that the Petition for Writ of Certiorari be refused.

Respectfully submitted,

LOYAL H. GREGG
MAHLON E. LEWIS
Attorneys for Respondent